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ATTORNEY FOR APPELLANT:

MARK L. CALLAWAY
Rensselaer, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ANN L. GOODWIN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

CAMERON K. WUETHRICH,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 37A03-0701-CR-30

APPEAL FROM THE JASPER SUPERIOR COURT
The Honorable John D. Potter, Judge
Cause No. 37C01-0607-FC-391

July 20, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Cameron K. Wuethrich appeals his conviction for Operating a Vehicle While Privileges Are Suspended,¹ a class D felony. Specifically, Wuethrich argues that the trial court erred by admitting his certified driving record into evidence at trial. Finding no error, we affirm the judgment of the trial court.

FACTS

On July 26, 2006, Jasper County Sheriff's Department Deputy Robert Cain was dispatched to Talbert Manufacturing after Kyle Hooker reported his vehicle stolen. Various employees at Talbert Manufacturing told Deputy Cain that Wuethrich had been involved in the vehicle's disappearance. Hooker's vehicle was later returned.

Deputy Cain apprehended Wuethrich in Rensselaer and transported him to the Jasper County Sheriff's Department for questioning. After Deputy Cain read Wuethrich the Miranda² rights, Wuethrich told the deputy that he "had taken Mr. Hooker's vehicle without permission" and had driven it to his brother's house to have "a couple alcoholic beverages." Tr. p. 16. After checking the status of Wuethrich's driver's license, Deputy Cain learned that Wuethrich had been adjudged as a habitual traffic violator (HTV).

On July 27, 2006, the State charged Wuethrich with class C felony operating a motor vehicle after a forfeiture of license for life. On August 8, 2006, the State also charged Wuethrich with class A misdemeanor conversion. A bench trial was held on December 13, 2006, and the State introduced a copy of Wuethrich's driving record from the Indiana Bureau

¹ Ind. Code § 9-30-10-16(a).

² Miranda v. Arizona, 384 U.S. 436 (1966).

of Motor Vehicles (BMV) into evidence. Wuethrich objected, arguing that (1) the driving record was untrustworthy because one entry indicated that his license had been suspended for life while another entry indicated that his license had been suspended for one year following an August 2005 conviction, (2) its admission denied him his right to cross-examine witnesses against him, and (3) the record was not the best evidence of Wuethrich's license status. The trial court overruled Wuethrich's objection, admitting the driving record into evidence. After the presentation of evidence, the trial court found Wuethrich guilty of class D felony operating a vehicle while privileges are suspended and class A misdemeanor conversion. Wuethrich now appeals.

DISCUSSION AND DECISION

Wuethrich argues that the trial court erred by admitting the driving record into evidence over his objection because (1) the driving record was untrustworthy, inadmissible hearsay that did not qualify as an exception under Indiana Rule of Evidence 803(8); and (2) the driving record violated the best evidence rule.

We initially observe that we review the trial court's decision to admit or exclude evidence for an abuse of discretion. Johnson v. State, 845 N.E.2d 147, 149-50 (Ind. Ct. App. 2006). A trial court abuses its discretion when the ruling is clearly against the logic and effect of the facts and circumstances before the court. Farris v. State, 818 N.E.2d 63, 67 (Ind. Ct. App. 2004). We do not reweigh the evidence and we consider conflicting evidence in a light most favorable to the trial court's ruling. Marlowe v. State, 786 N.E.2d 751, 753 (Ind. Ct. App. 2003).

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted and is not admissible unless it fits within an exception to the rule. Tate v. State, 835 N.E.2d 499, 508 (Ind. Ct. App. 2005). The public records and reports exception provides that

[t]he following are not excluded by the hearsay rule, even though the declarant is available as a witness.

(8) Public Records and Reports. Unless the sources of information or other circumstances indicate lack of trustworthiness, records, reports, statements, or data compilations in any form, of a public office or agency, setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law. . . .

Ind. Evid. Rule 803(8). Documents properly certified by the BMV are admissible under Rule 803(8) as a compilation of the BMV's "regularly conducted and regularly recorded activities.'" Fennell v. State, 698 N.E.2d 823, 824 (Ind. Ct. App. 1998) (quoting Coates v. State, 650 N.E.2d 58, 63 (Ind. Ct. App. 1995)).

Wuethrich argues that the BMV driving record admitted at trial was untrustworthy because one entry indicated that his license had been suspended for life while another entry indicated that his license had been suspended for one year.³ He argues, therefore, that the driving record does not fall within the public records hearsay exception provided in Rule 803(8) because the record is inherently untrustworthy. For that reason, Wuethrich argues that the trial court abused its discretion by admitting the record into evidence.

³ The latter entry indicated that the one-year license suspension began on August 4, 2005, and Wuethrich admitted to driving Hooker's vehicle on July 26, 2006. Wuethrich does not argue that his license was not suspended when he drove Hooker's vehicle.

Wuethrich does not argue that the BMV driving record was not properly authenticated pursuant to Evidence Rule 901.⁴ We have previously held that any inconclusiveness regarding a properly authenticated public record “affects only the exhibit’s evidential weight.” Dumes v. State, 718 N.E.2d 1171, 1176 (Ind. Ct. App. 1999) (emphasis added). Therefore, the inconsistencies that Wuethrich argues render the driving record to be inadmissible hearsay only affect the weight of the evidence, not its admissibility. Because we do not reweigh the evidence on appeal, Wuethrich’s argument fails and we cannot conclude that the trial court abused its discretion by admitting the driving record into evidence.

Wuethrich also argues that the driving record “was not the best evidence because the term [‘]life[’] was a conclusion made by hearsay and it denied Wuethrich the opportunity to cross-examine and confront on the contradictory information.” Appellant’s Br. p. 10. The best evidence rule provides that

[t]o prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute. An electronic record of the Indiana Bureau of Motor Vehicles obtained from the Bureau that bears an electronic or digital signature, as defined by statute, is admissible in a court proceeding as if the signature were an original.

Ind. Evid. Rule 1002.

⁴ Evidence Rule 901 provides that “the requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” Here, a BMV Commissioner signed Wuethrich’s driver’s record, affixed the Seal of the Indiana BMV, and certified that it was a “full, true and complete copy of the record.” Ex. 1.

Although Wuethrich claims that his argument invokes the best evidence rule, in actuality, it is a rewording of his previous argument regarding the admissibility of an inconsistent driving record. The purpose of the best evidence rule is to “require[] production of an original document when its terms are material.” Underwood v. State, 535 N.E.2d 507, 517 (Ind. 1989). Wuethrich’s argument focuses on the inconsistencies within the driving record, and he does not argue that the State did not produce the “original” record pursuant to Evidence Rule 1002. In sum, although Wuethrich attempts to invoke the best evidence rule, his argument misses the mark. As we have already held, any inconsistencies regarding the properly authenticated BMV driving record affect the weight of the evidence, not its admissibility, and it was for the trier of fact to resolve the inconsistencies.⁵

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and CRONE, J., concur.

⁵ Additionally, we note that the trial court determined that the State had not sufficiently proved that Wuethrich’s license was suspended for life and, instead, found him guilty of the lesser-included offense of class D felony operating a vehicle while privileges are suspended. Appellant’s App. p. 36. Therefore, the trial court resolved the inconsistencies within the record in favor of Wuethrich.